

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID GIROUX, Derivatively on Behalf
of ACER THERAPEUTICS, INC.,

Plaintiff,

v.

JASON AMELLO, STEVE ASELAGE,
HUBERT BIRNER, JOHN M. DUNN,
MICHELLE GRIFFIN, LUC MARENGERE,
HARRY PALMIN, and CHRIS SCHELLING,

Defendants,

and

ACER THERAPEUTICS, INC.,

Nominal Defendant.

Lead Case No. 1:20-cv-10537

Hon. George A. O'Toole, Jr.

**NOTICE OF NON-OPPOSITION TO PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT, APPROVAL
OF NOTICE PLAN, AND SETTING OF FAIRNESS HEARING**

Plaintiff David Giroux ("Plaintiff" or "Giroux") respectfully submits this Notice of Non-Opposition to Plaintiff's previously filed Motion for Preliminary Approval of Settlement, Approval of Notice Plan to Class Members; and Setting of a final Fairness Hearing (the "Preliminary Approval Motion") (ECF No. 8), as follows:

1. On December 31, 2020, (i) Giroux and other Acer Therapeutics, Inc. ("Acer") stockholders who filed similar cases in other courts (together, "Plaintiffs")¹; (ii) Nominal Defendant Acer; and (iii) individual defendants Jason Amello, Steve Aselage, Hubert Birner, John

¹ See also *In re Acer Therapeutics, Inc. Derivative Litigation*, Lead Case No. 1:19-cv-01505-MN (D. Del.), and *King v. Schelling, et al.*, Case No. 1:20-cv-04779-GHW (S.D.N.Y.).

M. Dunn, Michelle Griffin, Luc Marengere, Harry Palmin, and Chris Schelling (the “Individual Defendants” and together with Acer, the “Defendants”) entered into a Stipulation of Settlement (the “Stipulation”), through which the parties intended to resolve this and other related stockholder derivative actions.

2. On January 21, 2021, Plaintiff filed the Motion for Preliminary Approval.

3. As of today, no party or non-party has filed any opposition to the Preliminary Approval Motion. Moreover, Plaintiff is not aware of any intended opposition either to the Stipulation or to the Preliminary Approval Motion

4. Plaintiff respectfully submits that, in addition to the reasons set forth in his Preliminary Approval Motion papers (ECF Nos. 8-10), the absence of any objection or opposition to the Preliminary Approval Motion further supports that the Court should grant the relief requested therein. *E.g., Lincoln Adventures LLC v. Certain Underwriters at Lloyd’s*, Civil Action No. 08-00235 (CCC), 2019 U.S. Dist. LEXIS 171917, at *21 (D.N.J. Oct. 3, 2019) (“No settlement class members objected to the terms of the settlement Such lack of any objections strongly supports approval.” (internal citations and quotations omitted)).

5. Based on the foregoing, Plaintiff respectfully requests that the Court grant the Preliminary Approval Motion, and enter the accompanying Preliminary Approval Order (ECF No. 10-4), which will provide: (i) preliminary approval of the Settlement; (ii) approval of the form and manner of giving notice to Current Acer Stockholders of the Settlement; and (iii) a hearing date and time to consider final approval of the Settlement and related matters.

Dated: March 5, 2021

Respectfully Submitted,

/s/ Shannon L. Hopkins
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Shannon L. Hopkins, certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on March 5, 2021.

Dated: March 5, 2021

/s/Shannon L. Hopkins
Shannon L. Hopkins